2185

SUPREME COURT OF THE UNITED STATES.

No. 144.

EDWARD H. McCABE, PLAINTIFF IN ERROR,

vs.

LOYD D. WORTHINGTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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2586.

STATE OF MISSOURI,
County of Audrain, ss.

Pleas and proceedings heretofore had in the Audrain circuit court, in the case of Edward H. McCabe against Loyd D. Worthington, in words and figures following, to wit:

STATE OF MISSOURI,
County of Pike, ss.

Pleas and proceedings heretofore had in the Pike circuit, in the case of Edward H. McCabe vs. Loyd D. Worthington, in words and figures following, to wit:

STATE OF MISSOURI,
County of Pike, ss.

In the Pike county circuit court, September term, 1848.

Edward H. McCabe, plaintiff, by Freman and Reber, and J. O. Broadhead, his attorneys, complain of Loyd D. Worthington, defendant, of a plea of trespass and ejectment. For that the said plaintiff, on the fourteenth day of August, A. D. 1848, was entitled to the possession of the following tract of land, lying in the said county of Pike, to wit: The west half of the southwest quarter of section thirty-three, in township fifty-two north, in range two west, of the fifth principal meridian, containing eighty acres, more or less; also the northeast quarter of the southwest quarter of said section, in said township and range, containing forty acres, more or less; also the east half of the southeast quarter of said section, in the same township and range, containing eighty acres, more or less; also the southeast quarter of the southwest quarter of said section, in the said township and range, containing forty acres, more or less; also the southwest quarter of the southeast quarter of said section, in the said township and range, containing eighty acres, more or less; also the east half of the northeast quarter of said section, in said township and range, containing eighty acres, more or less; also the east half of the southwest quarter of section thirty-four, in said township and range; and also the east half of the southeast quarter of section thirty-two, in said township and range, containing eighty acres, more or less; and being so entitled to the possession thereof, the said defendant afterwards, to wit, on the day and year aforesaid, at said county, entered into the said tracts of land, and unlawfully withholds from the plaintiff the possession thereof, to the damage of the said plaintiff of one thousand dollars, and therefore he sues.

FREMAN & REBER,
J. O. BROADHEAD,
Attorneys for plaintiff.

Filed 15th August, 1848.

J. M. MARTIN, *Clerk.*

STATE OF MISSOURI,
County of Pike, ss.

The State of Missouri, to the sheriff of the county of Pike, greeting:

We command you to summon Loyd D. Worthington, defendant, to appear before the judge of our circuit court, on the first day of the next September term thereof, to be begun and held at the court-house in Bowling Green, within and for the said county of Pike, on the first Monday of September next, then and there, in our said court, to answer a plea of trespass and ejectment filed against him in our said court by Edward H. McCabe, plaintiff, which said plea is hereunto annexed and sent with this writ; and have you then there this writ, with your doings therein.

Witness James M. Martin, clerk of our said court, the seal whereof is hereunto affixed, at the office of court in Bowling Green, [SEAL.] in said county, this 15th day of August, in the year of our Lord 1848.

J. M. MARTIN, *Clerk.*

On which appears the following return of the sheriff, to wit:

STATE OF MISSOURI,
County of Pike, ss.

I executed the within writ by reading the same, together with the declaration hereunto annexed, in the presence and hearing of the within named Loyd D. Worthington, in the county of Pike, and State aforesaid, on the 16th day of August, 1848.

S. W. FINLEY, *Sheriff,*
Per M. W. BUFORD, *D. S.*

And the defendant's plea, in words and figures as follows, to wit:

EDWARD H. McCABE
vs.
LOYD D. WORTHINGTON. } Ejectment.

August term, 1848.

And the said defendant, by his attorney, comes and defends the demand of the plaintiff.

CARTY WELLS,
Attorney for defendant.

Which said plea is endorsed—Filed in open court, 5th September, 1848.

J. M. MARTIN, *Clerk.*

And at the September term of said circuit court, 1848, to wit, on the 5th day of said month, the following entry appears on the record of the court, to wit:

EDWARD H. McCABE
vs.
LOYD D. WORTHINGTON. } Ejectment plea filed.

And at the April term of said court, 1849, the following entry appears on the record of said court, to wit:

EDWARD H. McCABE, plaintiff,
vs.
LOYD D. WORTHINGTON, defendant. } Ejectment.

The judge of this court having been of counsel for defendant in this cause, it is ordered by the court that the venue be changed to the county of Audrain, and that the clerk make out and transmit to the clerk of the circuit court of said county of Audrain a complete copy of the record of the proceedings in the cause, together with all original papers filed in the cause, and not forming a part of the record.

STATE OF MISSOURI,
County of Pike, ss.

I, James M. Martin, clerk of the circuit court for said county, certify, that the foregoing is a complete copy of the record of the proceedings in the above entitled cause, together with all original papers filed in the cause, and not forming a part of the record.

Witness my hand and the seal of said court affixed, at [SEAL.] office in Bowling Green, in said county, this 3d day of July, 1849. J. S. MARTIN, *Clerk*.

On which said copy of record is the following endorsement, to wit:

E. H. McCABE
vs.
L. D. WORTHINGTON. } Ejectment.

To Audrain from Pike, filed September 29, 1849.
J. P. CLARK, *Clerk*.

STATE OF MISSOURI,
County of Audrain.

Audrain circuit court, October term, 1849.

And at the October term of the Audrain circuit court, to wit, on the 23d day of said month of October, A. D. 1849, the following entry appears on the record of said court, to wit:

Change of venue from Pike county, Missouri.

EDWARD H. McCABE
vs.
L. D. WORTHINGTON, defendant. } In ejectment.

This cause is continued until the next term of this court.

At the April term, 1850, of the Audrain circuit court, to wit, on the 23d day of said month of April, A. D. 1850, the following entry appears on the record of said court, to wit:

Change of venue from Pike county, Missouri.

E. H. McCabe, plaintiff,
vs.
L. D. Worthington, defendant.

And this cause is continued till the next term of this court.

And at the October term, 1850, of said court, to wit, on the 30th day of said month of October, A. D. 1850, the following entry appears on record of said court, to wit:

Change of venue from Pike circuit court.

Edward H. McCabe, plaintiff,
against
L. D. Worthington, defendant.

And this day came the parties, by their respective attorneys, and say they are ready for trial; whereupon come a jury of twelve good and lawful men of the body of the county of Audrain, to wit, J. W. Levaugh, Harvey S. Hubbard, Wm. B. Evans, J. W. Kilgore, Wm. White, John J. Weaver, John Rigins, Loyd Eubank, D. J. Fort, G. F. Muldron, D. P. Faucett, and Roland McIntyre, who were sworn to try cause, and after having part of the evidence produced were by the court discharged until to-morrow morning, at 10 o'clock.

And afterwards, to wit, at the same term of said Audrain circuit court, on the 31st day of October, A. D. 1850, the following entry appears on the record of said court, to wit:

Change of venue from Pike circuit court.

E. H. McCabe, plaintiff,
against
L. D. Worthington, defendant.

And the jury heretofore sworn to try this cause now are called, when the remainder of evidence is produced, and the plaintiff refusing to further prosecute this suit against the said defendant at this time, takes a non-suit with leave to move to set the same aside; whereupon the jury as aforesaid are wholly discharged from giving any verdict of and upon this cause; and it is further considered by the court that the said defendant do recover of and from the said plaintiff his costs and charges by him expended, and that he have thereof his writ of execution.

And afterwards, to wit, on same day of said term of said court, an agreement of the counsel in this cause was filed, which said agreement is in words and figures following, to wit:

"It is agreed that the case of Antoine Soulard vs. United States, claim for 10,000 arpens of land, was appealed from the district court of Missouri to the Supreme Court of the United States within one year from the time of the rendition of the decree of said district court, and that on the 21st Jan., 1836, the Supreme Court rendered the decree reported on pages 100 to 106 inclusive, in 10 Peters' Reports.

"THOS. L. ANDERSON, *for Deft.*"

On which agreement is the following endorsement: E. H. McCabe vs. Loyd D. Worthington; agreement of counsel filed October 31st, 1850. J. P. CLARK, *Clerk.*

And at the same term of said Audrain circuit court, to wit, on the 1st day of November, A. D. 1850, the following entry appears on the record of said court, to wit:

Change of venue from Pike circuit court.

E. H. McCabe, plaintiff,
against
L. D. Worthington, defendant.

This day comes the plaintiff, by his attorneys, and files his motion to set aside the non-suit in this cause for the reasons therein stated, which said motion is by the court overruled; whereupon the plaintiff, by his attorneys, files his bill of exceptions to the proceedings had in this cause, which said bill of exceptions is signed by the court and made part of the record in this cause; which said bill of exceptions is in the words and figures following, to wit:

Before the circuit court of Audrain county.

Edward H. McCabe
vs.
Loyd D. Worthington.

Be it remembered, that on the trial of this cause the plaintiff, to maintain the issue on his part, offered and gave in evidence the following proofs:

First. That Antoine Soulard, on the twenty-second day of August, 1824, filed his petition in the district court of Missouri, under the act of Congress passed May the 26th, 1824, for the confirmation of his title to 10,000 arpens of land, and that on the 20th January, 1835, the petitioner filed the following amended petition in words and figures as follows, to wit, filed January 20th, 1835.

To the judge of the district court of the United States, for the State of Missouri.

Respectfully showeth, your petitioner, Antoine Soulard, of the county

of St. Louis, State of Missouri, that some time in the month of April, one thousand seven hundred and ninety-six, your petitioner being then a resident of the province of Upper Louisiana, and surveyor general of the same under the Spanish Government, presented his petition to the lieutenant governor of said province, Don Zenon Trudeau, praying that a tract of land of ten thousand arpens, French measure, to be located on any vacant part of the royal domain, might be granted to your petitioner and his heirs forever. That in compliance with the prayer of said petition, and in order to remunerate your petitioner for services rendered to the Spanish Government, the said Don Zenon Trudeau did, by virtue of the power vested in him as lieutenant governor aforesaid, on the twentieth day of April, in the year one thousand seven hundred and ninety-six aforesaid, grant to your petitioner and his heirs forever ten thousand arpens of land, and by said decree of concession did order the said quantity of land to be located and surveyed on any vacant [land] of the royal domain in said province at the choice of your petitioner. That said quantity of ten thousand arpens was afterwards, on the twentieth day of February, one thousand eight hundred and four, by virtue of said decree, surveyed and located by the deputy surveyor, Don Santiago Rankin, thereto duly authorized, on a vacant part of the public land, situate about fifteen miles west of the Mississippi, and seventy miles north of the town of St. Louis, in the county aforesaid on a branch of the river Cuivre, and which said tract is situated and bounded as follows, commencing at a point in the northeast quarter of section 25, T. 51 north, range 3 west, runs thence north 68 east, 317 chains 08 links, to a point in the NE. quarter of section 14, township 51 N., range 2 west; thence N. 22 W., 214.16 chains, to a point in the SE. quarter of section 34, T. 52 N., range 2 west; thence S. 68 W., 317.08 chains, to a point in the SE. quarter of section eleven, township 51 north, range three west; thence S. 22 E., 214.16 chains, to the place of beginning, all which will appear by reference to the general plat of survey upon which said tract is laid down, according to the law in such case made and provided.

Your petitioner further shows, that a certificate of said survey and location was in due form made and signed by your petitioner, as surveyor general of said province, in pursuance of the report thereof made to him by the said deputy surveyor, Santiago Rankin, which said certificate was made and bore date on the eighth day of March, one thousand eight hundred and four, and that an entry of said survey and certificate was made by your petitioner, in his capacity of surveyor aforesaid, in the book of record kept by your petitioner of surveys executed pursuant to superior orders by your petitioner, or by his deputies, in said province, as will more fully appear by said book of records, page 465, now in the office of the principal surveyor of this district. Your petitioner further showeth, that some time after the date of said survey, certificate, and entry, and before the time when claims to land should have been filed pursuant to the law of Congress of the second March, 1805, through mistake said decree of concession and certificate of sur-

vey, together with other papers belonging to your petitioner, were thrown into the fire and destroyed. That in consequence of the destruction of said concession and certificate, your petitioner, under an erroneous impression, considered that he was excluded from the benefit of the act of Congress, passed for the relief of land claimants, and omitted to file any notice of his claim, under said decree of concession and survey, and has thereby been deprived of the benefit of the laws heretofore passed by Congress. That your petitioner, after a lapse of several years, was informed by counsel whom he consulted, that the loss of the said documents did not deprive him of any right which they originally vested in him. That thereupon your petitioner, on the twenty-seventh day of February, one thousand eight hundred and eighteen, presented his petition to the Congress of the United States, setting forth the above facts, and praying a confirmation of his said title. That said petition was referred to the Committee of Private Land Claims, but was not specially reported on, inasmuch as there was a general law reported by said committee for the relief of land claimants in the State of Missouri, which would embrace your petitioner's case. Your petitioner shows, that in consequence of your petitioner's said tract not having been laid down in due time on the general plat, or reserved from sale in the land office of the United States, the quantity of one thousand nine hundred and forty-seven acres and thirty-five hundredths, have been definitely sold by the United States to the following persons, and in the following quantities, to wit: SW. qr. of sec. 4, t. 51, r. 2 W., 160 acres, to John McCoy; E. ½ SE., sec. 5, t. 51, r. 2 W., 80 acres, to John McCoy; part of the NW. qr. sec. 7, t. 51, r. 2 W., 145 acres, to Meredith Cox; SW. qr. sec. 7, t. 51, r. 2 W., 234 acres 15, to Samuel Deney; SE. qr. of sec. 7, t. 51, r. 2 W., 160 acres, to Meredith Cox; W. ½ NW. qr. sec. 8, t. 51, r. 2 W., 80 acres, to Hugh Barnett; E. ½ SW. qr. 9, t. 51, r. 2 W., 80 acres, to Nicholas Wells; SE. qr. 9, t. 51, r. 2 W., 160 acres, to James Wells; NE. qr. 18, t. 51, r. 2 W., 160 acres, to Quinton Moore; NE. qr. 17, t. 51, r. 2 W., 160 acres, to Hugh Barnett; SE. qr. 17, t. 51, r. 2 W., 160 acres, to J. Lewis and John Watts; part NE. qr. 12, t. 51, r. 3, to William Elgin; part SW. qr. 12, t. 51, r. 3, 300, to James Lewis; part SE. qr. 12, t. 51, r. 3, to William Elgin; part E. ½ SW. qr. 13, t. 51, r. 3, 68 acres, to George Seely; all which will appear by reference to the general plat aforesaid, and to the book in the office of the register of the land office in the district of St. Louis. Your petitioner further showeth, that no other part or parcel of said tract of ten thousand arpens, as herein before described, is possessed or claimed by any person adverse to the claim or title of your petitioner, and that the residue of said tract is now reserved from public sale until a final decision shall be made on your petitioner's claim by the proper tribunal; wherefore your petitioner prays that the validity of his said claim may be inquired into and decided by this honorable court, and that inasmuch as the same might have been perfected into complete title, under and in conformity to the laws, usages, and customs of the government

under which the same originated, had not the sovereignty of the country been transferred to the United States, your petitioner prays that his claim and title be confirmed to all that part of the herein before described tract of ten thousand arpens, which has not been sold as aforesaid by the United States, and that your petitioner be authorized by the decree of this court in any office in the State of Missouri, the quantity of nineteen hundred and forty-seven acres and thirty-five hundredths, being the quantity disposed of by the United States, after the same shall have been offered at public [sale] according to the act of Congress in such case made and provided; and your petitioner prays that a citation be directed to the district attorney of the United States, requiring him on a day certain to appear and show cause, if any he can, against the relief prayed for by your petitioner; and your petitioner will pray, &c. ANTOINE SOULARD.

And on the 17th March, 1825, the following petition to revive was filed, in words and figures as follows, to wit:

To the judge of the district court of the United States, for the State of Missouri.

Respectfully show, your petitioners, Julia Soulard, widow of Antoine Soulard, late of the county of St. Louis, deceased, James Gaston Soulard, Henry Gustave Soulard, Eliza Soulard, and Benjamin Antoine Soulard, which said James, Henry, Eliza, and Benjamin are the children and heirs of said Antoine Soulard, that the said Antoine Soulard did, at the September term of this court, in the year 1824, exhibit his petition praying that a tract of ten thousand arpens of land, situated on a branch of the river Cuivre, granted to said Antoine by the Spanish Government, should be confirmed to said Antoine and his heirs, and that a citation should issue to the district attorney of the United States, requiring him to appear and show cause why said relief should not be granted; which citation being served, said district attorney appeared accordingly and demurred to said bill; which, by leave of the court, was afterwards amended as by said petition and demurrer, and amended petition, remaining as on record in that honorable court, relation being thereto had, may appear. But so it is, may it please this honorable court, that before any other proceedings were had in said cause, the said Antoine Soulard died intestate, whereby the said proceedings became abated.

To the end, therefore, that the said petition and cause, so abated as aforesaid, may stand revived against said United States and their said district attorney, and be in the same state and condition as the same were in at the time of the abatement thereof, may it please your honor to grant unto your petitioners a citation to revive, to be directed to the said district attorney, thereby requiring him to appear in this honorable court on the first day of the next ensuing term thereof, then and there to show cause, if he can, why the said proceedings, so abated as aforesaid, should not be revived, and be in the same state and condition as the same were in at the time of the abatement thereof, and that your

petitioners be further relieved in the premises; and your petitioners will ever pray, &c.

LAWLESS & STROTHER,
Solicitors for petitioners.

That afterwards, on the fourth Monday of March, 1825, said cause was revived, and thereupon the said district attorney filed the following answer to the amended petition, to wit:

The answer of Edward Bates, attorney of the United States, to the petition of Antoine Soulard, (as the said petition has been amended and revived in the name of the heirs of the said Soulard, who is dead,) praying for a confirmation of a tract of land, containing ten thousand arpens, situate on a branch of the river Cuivre, supposed to have been granted to the said Soulard by the Spanish Government.

This respondent, for and in behalf of the United States of America, for answer to the said petition, or to so much thereof as the rights and interests of the United States make it necessary for him to answer, answering says, that he is wholly ignorant and uninformed of all the matters and things in the said petition contained, and therefore does not admit the same to be true, and he prays the court here that the said petitioners may be held and required to prove all such facts, matters, and things, the existence whereof is, or may be deemed, necessary to the confirmation of the said claim; and moreover that the said petitioners may be required and compelled to produce and show to the court here the law, usage, or custom, by force and virtue whereof the said claim can or ought to be confirmed; and this respondent, &c.

E. BATES.

And that on the fourth Monday of December, 1825, the following decree was rendered by the said district court, to wit:

JULIA SOULARD, widow, and James G. Soulard and others, heirs and legal representatives of Antoine Soulard, deceased,
against
THE UNITED STATES.

Claim 10,000 arpens.

And now at this day, the said cause coming on to be debated and heard in the presence of the counsel for the petitioners and the attorney of the United States for the district of Missouri, on the petition, the answer, and the testimony, which is embodied in the record, it appears that the petition sets forth in substance that some time in the month of April, one thousand seven hundred and ninety-six, Antoine Soulard, the ancestor of the present petitioners, being then a resident of the province of Upper Louisiana, and surveyor general of the same under the Spanish Government, presented his petition to the then lieutenant governor of said province, Don Zenon Trudeau, praying the

grant of a tract of ten thousand arpens of land, to be located on any vacant part of the royal domain; that in compliance with the said petition, and in order to remunerate the services of said petitioner, the said Don Zenon Trudeau, lieutenant governor, did, about the time aforesaid, grant to the said petitioner ten thousand arpens of land, and by said decree of concession did order the said quantity to be located and surveyed on any vacant part of the royal domain in said province, at the election of said petitioner; that the said quantity of land was afterwards, on the twentieth day of February, one thousand eight hundred and four, surveyed and located by the deputy surveyor, Don Santiago Rankin, on a vacant part of the public land, situate about fifteen miles west of the Mississippi river, and seventy miles north of the town of St. Louis, and branch of the river Cuivre, and bounded as follows: Commencing at a point in the northeast quarter of section twenty-five, township fifty-one north, range three west; runs thence north sixty-eight east, three hundred and seventeen chains eight links, to a point in the northeast quarter of section fourteen, township fifty-one north, range two west; thence north twenty-two west, two hundred and fourteen chains and sixteen links, to a point in the southeast quarter of section thirty-four, township fifty-two north, range two west; thence south sixty-eight west, three hundred and seventeen chains and eight links, to a point in the southeast quarter of section eleven, township fifty-one north, range three west; thence south twenty-two east, two hundred and fourteen chains sixteen links, to the place of beginning; and that a certificate of said survey was duly made and recorded in the book of records of surveys kept by the said petitioner as surveyor as aforesaid; that before the time when claims should have been filed, pursuant to the act of Congress of the second of March, one thousand eight hundred and five, the said decree of concession and certificate of survey were, by mistake, thrown into the fire and destroyed; that in consequence of the destruction of said concession and certificate of survey, the said petitioner considered that he was excluded from the benefit of the act of Congress, passed for the relief of land claimants, and omitted to file any notice of his claim, and has thereby been deprived of the benefit of the laws heretofore passed by Congress; that of the said tract of land, one thousand nine hundred and forty-seven acres and thirty-five hundredths of an acre have been sold by the United States, and that the residue of the said tract is not claimed or possessed by any person other than the petitioner; and that the same has been reserved from public sale until the final adjudication thereon by the proper tribunal. The petitioner prays that the validity of his said claim may be inquired into and decided, and that his claim and title may be confirmed to all that part of the said tract which has not been sold as aforesaid by the United States; and that he be authorized to enter in any of the land offices in the State of Missouri the quantity of one thousand nine hundred and forty-seven acres and thirty-five hundredths of an acre of land, the quantity sold as aforesaid by the United States.

It appears, also, that on the seventeenth day of March, one thousand eight hundred and twenty-five, Julia Soulard, widow of the said petitioner, and James Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs-at-law of the said petitioner, filed their petition, setting forth that the said Antoine Soulard, after having filed and prosecuted his said petition, died, leaving the said widow and children his only heirs and legal representatives, and praying that the said cause might be revived and stand in their names against the United States; and the attorney of the United States, freely admitting all the facts set forth in the petition of the said widow and children, the said cause was revived accordingly. And it also appearing that the answer of the attorney of the United States sets forth in substance that he is wholly uninformed of all the matters and things in the said petition of Antoine Soulard, revived as aforesaid, contained; and, therefore, that he does not admit the same to be true, and that he prays the court that the said petitioners may be held and required to prove all such facts, matters, and things, the existence whereof is or may be deemed necessary to the confirmation of the said claim; and, moreover, that the said petioners may be required and compelled to produce and show to the court the law, usage, or custom, by force and virtue whereof the said claim can or ought to be confirmed; and it further appearing by the finding of the jury, empannelled to try the issue directed in this cause, that said concession was made to the said Antoine Soulard as in the said petition stated; and it also appearing in evidence, offered on the part of the said petitioners, that a survey of the said land was made and a plat thereof recorded, as in the said petition is stated; and that it was the practice of the lieutenant governor of Upper Louisiana to make concessions of land in virtue of their office as such governor, and not in virtue of any commission as sub-delegate. And after debate of the matters aforesaid, and the court having inquired into the validity of the title of the said petitioners, and for that it appearing to the court that no grant of the King's domain could have been legally made, unless made in virtue of some law or authority from him, and for that the regulations of Count O'Rielly, of the eighteenth of February, in the year one thousand seven hundred and seventy; and of Governor Gayoso, of the ninth of September, one thousand seven hundred and ninety-seven; and of Marcelus, the intendant, of the seventeenth of July, one thousand seven hundred and ninety-nine, exhibited a general intention and policy on the part of the Spanish Government, in relation to the disposition of the public domain, which excludes every reasonable supposition of the existence of any law, usage, or custom, under and in conformity to which the alleged concession might have been perfected into a complete title, had not the sovereignty of the country been transferred to the United States; and for that the principles, commands, and prohibitions, in those regulations contained, are not to be reconciled with any idea of the legality of the said concession, and are incompatible with the existence of any law, usage, or custom, in conformity with which the said concession might have been confirmed

had no change of sovereignty taken place. The court doth therefore find the alleged concession and claim of the petitioners to be illegal in its origin and invalid; and doth, therefore, decide, adjudge, and decree against the validity of the same; and doth further order, adjudge, and decree that the said petitioners pay all costs and charges occasioned in and about the prosecution and defence of this suit; and therefore, the said petitioners, by their attorney aforesaid, pray that they may appeal from the judgment aforesaid of the court of the United States, and to them the same is granted by the court here; whereupon the said petitioners exhibit to the court here an appeal bond for the payment of costs, entered into by Marie P. Luduc, which by the court here is approved. Thereupon it is ordered by the court here that a record of the proceedings aforesaid, with all things thereunto relating, be transmitted to the Supreme Court of the United States, together with a transcript of the evidence given on the hearing of this cause, as well on the part of the petitioners as on the part of the United States, consisting of the depositions of Charles Dehault Delassus, Auguste Chouteau, Marie P. Laduc, and Albert Tison; and also transcripts of the several papers referred to in those depositions, with the sworn translations of such the of said papers as are in a foreign language; and also a copy of a concession to John B. Janis, marked (O;) the evidence of Philip Fine, marked (P;) a copy of the certificate of survey, marked (Q;) a copy of the commission of Charles Dehault Delassus, as lieutenant governor, with a sworn translation, marked (R;) a copy of a complete title to Rigu Loisel, with a sworn translation, marked (S;) a copy of a complete title to Jacques De St. Vrain, with a sworn translation, marked (T;) a copy of a complete title to Charles Gratiot, with a sworn translation, marked (U;) a copy of the boundaries of Soulard's unconfirmed claim on the general plat, marked (V;) and a copy of a certified list exhibiting all the lands sold and not relinquished, covered by Soulard's claim, marked (W;) and it is further ordered that these papers and proceedings, and every of them, be considered and made a part of the record in this case for the consideration of the said Supreme Court.

It was agreed by the parties that this was all the record and proceedings of the district court of Missouri, necessary or material to be given in evidence. It was also agreed by the parties that the plaintiff in said suit, in due form of law, within one year from the rendition of the final decree by the district court of Missouri, appealed the said cause to the Supreme Court of the United States, and that said court on the 21st day of January, 1836, rendered the following decree, to wit:

The court doth therefore finally order, adjudge, and decree, that the decree of the district court of Missouri be, and the same is hereby, annulled and reversed, except as to such part or parts of the lands surveyed to the said Soulard, pursuant to the aforesaid concession, as had been sold by the United States before the filing of the petition in this case, as to which the decree of the district court is hereby affirmed and the land so sold confirmed to the United States. And this court, proceeding to render such decree as the district court ought to have ren-

dered, doth further order, adjudge, and decree, that the title of the petitioners to all of said land embraced in said concession and survey, which has not been so sold by the United States, is valid by the laws and treaty aforesaid, and is hereby confirmed to them agreeably to said concession and survey. And the court doth further order, adjudge, and decree, that the surveyor of public lands in the State of Missouri shall cause the land specified therein and in this decree to be surveyed at the expense of the petitioners, and to do such other acts thereon as are enjoined by law on such surveyor; also, that such surveyor shall certify on the plats and certificates of such survey to be so made, what part or parts of the original survey of such land has been sold as aforesaid by the United States, together with the quantity thereof; which being ascertained, the said petitioners, their heirs or legal representatives, shall have the right to enter the same quantity of land as shall be so certified to have been so sold by the United States in any land office in the State of Missouri, after the same shall have been offered for sale; which entry shall be made conformably to the act of Congress in such case made and provided.

It was also agreed by the parties, that in pursuance of the decree of the Supreme Court of the United States, the surveyor of public lands in the State of Missouri surveyed the land specified and confirmed in the decree, and returned a copy of the survey to the Commissioner of the General Land Office, and that on the 22d day of December, 1845, the President of the United States, in due form of law, issued a patent for the land so surveyed to Julia Soulard, widow, and James G. Soulard and others, heirs of Antoine Soulard, deceased; that the land described in the declaration lies within the tract so surveyed and patented. It was also admitted, that the plaintiff in this suit has, and had, at the commencement of the suit, all the title to the land patented to said Julia Soulard, widow, and James G. Soulard and others, heirs, &c., that they decreed from the patent confirmation and other proceedings above stated. It was also admitted, that the defendant was in possession of the premises described in the declaration at the commencement of this suit, and that the yearly value of the premises is $18, and that the monthly value of the rents and profits is $1 50.

And the defendant, to maintain the issue on his part, gave in evidence the following proofs, patents, dated in the year 1836, from the United States to divers persons for so much of the land in the declaration as defendant was in possession of at the commencement of this suit; and it is admitted, that he, the defendant, had all the title conveyed by said patents; that the entry on which said patents were issued, *were* made after the filing Soulard's petition in the district court for confirmation in August, 1824, and before the final decree of the Supreme Court of the United States in January, 1836, to wit, in the year 1834. This is all the evidence in the cause deemed material by the parties. The plaintiff thereupon moved the court to give the jury the following instructions in the matters of law, to wit:

First. The plaintiff's counsel moves the court to instruct the jury

as follows: That the decree of confirmation, made by the Supreme Court of the United States on the 21st day of January, 1836, to Julia Soulard, widow, and James G. Soulard and others, heirs of Antoine Soulard, deceased, relates back to the time of filing the petition for confirmation, and passes to the confirmees the title to the land thereby confirmed, so as to cut out all titles and claims thereto originating after the filing of said petition.

Second. If the jury believe from the evidence that the land sued for was patented by the United States on the 22d day of December, 1845, to the widow and heirs of Antoine Soulard, deceased; that such patent was issued for land surveyed for said patentees in pursuance of a decree of confirmation made by the Supreme Court of the United States; and that such decree of confirmation was founded on a petition for a confirmation filed in the United States court for the district of Missouri, on the 22d day of August, 1824, such patent conveyed to the patentees a better title to the land sued for than that derived from an entry of the same made after the said 22d of August, 1824, or from a patent issued on such entry.

Third. If the jury believe from the evidence that Antoine Soulard, on the 22d day of August, 1824, petitioned the district court of the State of Missouri for the confirmation of his title to a claim for 10,000 arpens of land; that said Antoine Soulard died, and the suit was revived and prosecuted in the name of his widow and children; that the said district court decreed against the said claim; that said suit was appealed to the Supreme Court of the United States, within one year from the time of the rendition of said decree by the district court; that said Supreme Court afterwards decided in favor of the said claim, and by a decree confirmed the same to said widow and heirs; that the surveyor of public lands for the State of Missouri caused the land specified in said decree to be surveyed for said confirmees; if the jury find these facts to be true, then the said widow and heirs of Antoine Soulard had, by virtue thereof, a better title to the land included in such survey than the defendant can have to any part of it by virtue of an entry made after the said 22d of August, 1824, or by virtue of a patent issued on said entry.

Fourth. The title under the confirmation of the Supreme Court of the United States to the representatives of Antoine Soulard is a better title than that of the defendant.

Fifth. The act of May the 26th, 1824, passed by the Congress of the United States, reserved from sale the lands included within the bounds of all claims of the character embraced within the provisions of the first section of that act, from the time of the filing of the petition for confirmation of such claims in the district court of Missouri, until such time as said claims should be finally decided against the claimants.

Sixth. Any entry of land made within the limits of any claim, of the character embraced within the provisions of the first section of the act of May 26th, 1824, after the filing of the petition of the claimant in the district court, as provided for by said act, and before said claim shall

be finally decided against the claimant, is a void entry, and the patent issued thereon is a void patent. Which instructions the court refused to give; to which refusal the plaintiff then and there at the time excepted.

And the court, on motion of defendant, gave the following instructions, to wit:

Audrain circuit court, October term, 1850.

EDWARD H. McCABE
vs.
LOYD D. WORTHINGTON.

The counsel for the defendant moves the court to instruct the jury as follows:

1st. If notice of the Soulard claim was not filed with the recorder of land titles in St. Louis prior to the first day of July, 1808, then said claim was not by law reserved from sale; and, if not reserved from sale by law, was subjected to sale as other public lands.

2d. If Soulard's claim was not reserved from sale, then the entry of the defendant, if made according to law, being older, is a better title than the plaintiff's confirmation.

3d. The patent of the defendant is prima facie evidence that this entry was regular and lawful.

4th. The act of Congress of 26th May, 1824, under which Soulard's claim was confirmed, did reserve from sale the land covered by said claim, and any sales of such lands regularly made prior to the confirmation, conveys to the purchaser a better title than said confirmation, such claim not having been filed with the recorder prior to July 1st, 1808.

5th. The commencement of a suit by Soulard in the United States court, for the purpose of obtaining a confirmation of his claim, did not operate as notice of his claim, so as to affect a title otherwise regularly obtained from the United States; and sales of such land, made after the commencement of his suit, stands upon the same ground as if made before such suit was commenced.

THOS. L. ANDERSON,
For defendant.

To the giving of which instructions the plaintiff then and there at the time excepted, and the plaintiff thereupon submitted to a non-suit, with leave to move to set the same aside; and afterwards the plaintiff filed the following motion and reasons to set aside the non-suit, and for a new trial, to wit:

EDWARD H. McCABE
vs.
LOYD D. WORTHINGTON. } Audrain circuit court.

And the plaintiff comes and moves the court to set aside the non-suit in this case, and grant a new trial of this cause, for the following reasons:

1st. Because the court erroneously and unlawfully gave the instructions asked for by the defendant.

2d. The court erroneously and unlawfully refused to give legal and proper instructions asked for by the plaintiff.

3d. Because the instructions, in matters of law, given by the court, are erroneous, and against the law of the land, and the rights of the plaintiff.

4th. Because the instructions, in matters of law, asked by the plaintiff, and which the court refused to give, are according to the law of the land, and ought to have been given.

J. O. BROADHEAD,
FREEMAN & REBER,
Att'ys for plaintiff.

Which said motion is endorsed, "filed November 1st, 1850.
"J. P. CLARK, *Clerk.*"

STATE OF MISSOURI, *county of Audrain, ss.*

I, J. P. Clark, clerk of the circuit court, within and for the county aforesaid, do certify, that the foregoing thirty five pages contain a complete copy of the record of the proceedings had in the above entitled cause, together with the original papers on file in office.

In witness whereof I have hereunto set my hand, and affixed the seal of said court, at office in Mexico, in said county, this [L. S.] second day of December, in the year of our Lord eighteen hundred and fifty.

J. P. CLARK, *Clerk.*

THE STATE OF MISSOURI, *ss.*

The State of Missouri, to the judge of the second judicial circuit in said State, greeting:

Whereas, in the record and proceedings in a certain cause lately pending in the circuit court of Audrain county, Missouri, wherein Edward H. McCabe is plaintiff, and Loyd D. Worthington is defendant, in an action of ejectment, manifest error hath intervened, to the great damage of the said plaintiff, as by plaintiff's complaint we are informed.

Now, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court, to be begun and held at the city of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness William E. Dunscomb, clerk of our said supreme court, at office, in the city of Jefferson, the 18th day of November, in the year of our Lord one thousand eight hundred and fifty.
[L. S.]
WM. E. DUNSCOMB.

At the January term, 1852, of the supreme court of the State of Missouri, the following appears of record:

Error to Audrain circuit court.

E. H. McCABE, plaintiff in error,
vs.
L. D. WORTHINGTON, defendant in error.

Now at this day come the parties aforesaid by their respective attorneys, and submit this cause to the court for decision upon their written arguments.

And at the July term of said court the following appears of record:

Error to Audrain circuit court.

E. H. McCABE, plaintiff in error,
vs.
L. D. WORTHINGTON, defendant in error.

Now at this day come again the parties aforesaid by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge, that the judgment aforesaid, in form aforesaid by the said circuit court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court, that the said defendant in error recover against the said plaintiff in error his costs and charges herein expended, and have thereof execution.

Scott, judge, delivered the opinion of the court.

This was an action of ejectment begun in the Pike circuit court, which by a change of venue was taken to Audrain county, where on a trial the plaintiff submitted to a non-suit, and after an unsuccessful application to set it aside, brought his cause by appeal to the court.

The plaintiff's title rested on a concession by the Spanish Government in 1776, which was confirmed by a decree of the Supreme Court of the United States, on the 21st January, 1836, on an appeal from the district court of Missouri, which exercised jurisdiction of the subject matter, under the provisions of the act of Congress of May 26th, 1824, entitled "an act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims." The petition was filed by the claimant, Antoine Soulard on the 22d August, 1824. In January, 1825, an amended petition was filed by Antoine Soulard, who afterwards died; and on the 4th Monday of March following the proceedings were revived in the name of the widow and heirs of the said Soulard, and such proceedings were had, that a decree was rendered against the petitioners

by the district court on the 4th Monday of December, 1825, from which an appeal to the Supreme Court of the United States was taken within one year from its rendition, where on the 21st January, 1836, the decree of the district court was reversed, and the claim of the petitioners was confirmed for all the land claimed, except that which had been sold by the United States before the filing of the petition in the case. In pursuance to this decree, the land claimed and confirmed was surveyed, and the survey returned to the Commissioner of the General Land Office; on which, on the 22d December, 1845, a patent was issued to the petitioners under whom the plaintiff claims. The land sued for is comprehended within the limits of the survey, and in the patent to Soulard's widow and heirs. No notice in writing, stating the nature and extent of his claim, was ever delivered by Soulard to the recorder of land titles under any of the acts of Congress in relation to that subject.

The defendant was in possession of the premises in controversy, and their yearly value was estimated at 18 dollars.

The defendant's title rested on patents from the United States in the year 1836. These patents were based upon entries made in the year 1834, after the filing of Soulard's petition in the district [court] in August, 1824, and before the final decree of the Supreme Court of the United States in January, 1836.

The court refused the following instructions asked by the plaintiff:

First. The plaintiffs' counsel moved the court to instruct the jury as follows: That the decree of confirmation made by the Supreme Court of the United States, on 21st January, 1836, to Julia Soulard, widow, and James G. Soulard and others, heirs of Antoine Soulard, deceased, relates back to the time of filing the petition for confirmation, and passes to the confirmees the title to the land thereby confirmed, so as to cut out all titles and claims thereto, originating after the filing of said petition.

Second. If the jury believe, from the evidence, that the land sued for was patented by the United States, on the 22d day of December, 1845, to the widow and heirs of Antoine Soulard, deceased; that such patent was issued for land surveyed for said patentees in pursuance of a decree of confirmation made by the Supreme Court of the United Sates, and that such decree of confirmation was founded on a petition for confirmation, filed in the United States court for the district of Missouri, on the 22d day of August, 1824, such patent conveyed to the patentees a better title to the land sued for than that derived from an entry of the same made after the said 22d of August, 1824, or from a patent issued on such entry.

Third. If the jury believe, from the evidence, that Antoine Soulard, on the 22d day of August, 1824, petitioned the district court of the State of Missouri for the confirmation of his title to a claim for 10,000 arpens of land, that said Antoine Soulard died, and the suit was revived and prosecuted in the name of his widow and children; that said district court decreed against the said claim; that said suit was appealed to the Supreme Court of the United States within one year from the time of the rendition of said decree by the district court; that said Supreme

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Court afterwards decided in favor of the said claim, and by a decree confirmed the same to the said widow and heirs; that the surveyor of public lands for the State of Missouri caused the land specified in said decree to be surveyed for said confirmees. If the jury find these facts to be true, then the said widow and heirs of Antoine Soulard had, by virtue thereof, a better title to the land included in such survey, than the defendant can have to any part of it by virtue of an entry made after the said 22d August, 1824, or by virtue of a patent issued on said entry.

4th. The title under the confirmation of the Supreme Court of the United States to the representatives of Antoine Soulard is a better title than that of the defendant.

5th. The act of May 26th, 1824, passed by the Congress of the United States, reserved from sale the lands included within the limits of all claims of the character embraced within the provisions of the first section of that act, from the time of the filing of the petition for confirmation of such claims in the district court of Missouri, until such time as said claims should be finally decided against the claimant.

6th. Any entry of land made within the limits of any claim, of the character embraced within the provisions of the first section of the act of May 26th, 1824, after the filing of the petition of the claimant in the district court, as provided for by said act, and before said claim shall be finally decided against the claimant, is a void entry, and the patent issued thereon is a void patent. And gave the following instructions asked by the defendant:

The counsel for the defendant moves the court to instruct the jury as follows:

1st. If notice of Soulard's claim was not filed with the recorder of land titles in St. Louis prior to the first day of July, 1808, then said claim was not by law reserved from sale; and, if not reserved from sale by law, was subjected to sale as other public lands.

2d. If Soulard's claim was not reserved from sale, then the entry of the defendant, if made according to law, being older, is a better title than the plaintiff's confirmation.

3d. The patent of the defendant is prima facie evidence that his entry was regular and lawful.

4th. The act of Congress of 26th May, 1824, under which Soulard's claim was confirmed, did reserve from sale the land covered by said claim; and any sales of such lands, regularly made prior to the confirmation, conveys to the purchaser a better title than said confirmation, such claim not having been filed with the recorder prior to July 1st, 1808.

5th. The commencement of a suit by Soulard in the United States court, for the purpose of obtaining a confirmation of his claim, did not operate as notice of his claim, so as to affect a title otherwise regularly obtained from the United States; and sales of such land, made after the commencement of his suit, stands upon the same ground as if made before such suit was commenced.

by the district court on the 4th Monday of December, 1825, from which an appeal to the Supreme Court of the United States was taken within one year from its rendition, where on the 21st January, 1836, the decree of the district court was reversed, and the claim of the petitioners was confirmed for all the land claimed, except that which had been sold by the United States before the filing of the petition in the case. In pursuance to this decree, the land claimed and confirmed was surveyed, and the survey returned to the Commissioner of the General Land Office; on which, on the 22d December, 1845, a patent was issued to the petitioners under whom the plaintiff claims. The land sued for is comprehended within the limits of the survey, and in the patent to Soulard's widow and heirs. No notice in writing, stating the nature and extent of his claim, was ever delivered by Soulard to the recorder of land titles under any of the acts of Congress in relation to that subject.

The defendant was in possession of the premises in controversy, and their yearly value was estimated at 18 dollars.

The defendant's title rested on patents from the United States in the year 1836. These patents were based upon entries made in the year 1834, after the filing of Soulard's petition in the district [court] in August, 1824, and before the final decree of the Supreme Court of the United States in January, 1836.

The court refused the following instructions asked by the plaintiff:

First. The plaintiffs' counsel moved the court to instruct the jury as follows: That the decree of confirmation made by the Supreme Court of the United States, on 21st January, 1836, to Julia Soulard, widow, and James G. Soulard and others, heirs of Antoine Soulard, deceased, relates back to the time of filing the petition for confirmation, and passes to the confirmees the title to the land thereby confirmed, so as to cut out all titles and claims thereto, originating after the filing of said petition.

Second. If the jury believe, from the evidence, that the land sued for was patented by the United States, on the 22d day of December, 1845, to the widow and heirs of Antoine Soulard, deceased; that such patent was issued for land surveyed for said patentees in pursuance of a decree of confirmation made by the Supreme Court of the United Sates, and that such decree of confirmation was founded on a petition for confirmation, filed in the United States court for the district of Missouri, on the 22d day of August, 1824, such patent conveyed to the patentees a better title to the land sued for than that derived from an entry of the same made after the said 22d of August, 1824, or from a patent issued on such entry.

Third. If the jury believe, from the evidence, that Antoine Soulard, on the 22d day of August, 1824, petitioned the district court of the State of Missouri for the confirmation of his title to a claim for 10,000 arpens of land, that said Antoine Soulard died, and the suit was revived and prosecuted in the name of his widow and children; that said district court decreed against the said claim; that said suit was appealed to the Supreme Court of the United States within one year from the time of the rendition of said decree by the district court; that said Supreme

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Court afterwards decided in favor of the said claim, and by a decree confirmed the same to the said widow and heirs; that the surveyor of public lands for the State of Missouri caused the land specified in said decree to be surveyed for said confirmees. If the jury find these facts to be true, then the said widow and heirs of Antoine Soulard had, by virtue thereof, a better title to the land included in such survey, than the defendant can have to any part of it by virtue of an entry made after the said 22d August, 1824, or by virtue of a patent issued on said entry.

4th. The title under the confirmation of the Supreme Court of the United States to the representatives of Antoine Soulard is a better title than that of the defendant.

5th. The act of May 26th, 1824, passed by the Congress of the United States, reserved from sale the lands included within the limits of all claims of the character embraced within the provisions of the first section of that act, from the time of the filing of the petition for confirmation of such claims in the district court of Missouri, until such time as said claims should be finally decided against the claimant.

6th. Any entry of land made within the limits of any claim, of the character embraced within the provisions of the first section of the act of May 26th, 1824, after the filing of the petition of the claimant in the district court, as provided for by said act, and before said claim shall be finally decided against the claimant, is a void entry, and the patent issued thereon is a void patent. And gave the following instructions asked by the defendant:

The counsel for the defendant moves the court to instruct the jury as follows:

1st. If notice of Soulard's claim was not filed with the recorder of land titles in St. Louis prior to the first day of July, 1808, then said claim was not by law reserved from sale; and, if not reserved from sale by law, was subjected to sale as other public lands.

2d. If Soulard's claim was not reserved from sale, then the entry of the defendant, if made according to law, being older, is a better title than the plaintiff's confirmation.

3d. The patent of the defendant is prima facie evidence that his entry was regular and lawful.

4th. The act of Congress of 26th May, 1824, under which Soulard's claim was confirmed, did reserve from sale the land covered by said claim; and any sales of such lands, regularly made prior to the confirmation, conveys to the purchaser a better title than said confirmation, such claim not having been filed with the recorder prior to July 1st, 1808.

5th. The commencement of a suit by Soulard in the United States court, for the purpose of obtaining a confirmation of his claim, did not operate as notice of his claim, so as to affect a title otherwise regularly obtained from the United States; and sales of such land, made after the commencement of his suit, stands upon the same ground as if made before such suit was commenced.

should so happen that the lands, tenements, or hereditaments, decreed to any claimant, under the provisions of this act, shall have been sold by the United States or otherwise disposed of, it shall and may be lawful for the party interested to enter the like quantity of land." The act does not say, that if any claim under the provisions of the act shall have been disposed of, but if any land decreed shall have been sold, showing that the sale referred to the time of the decree, and not to the time of filing the petition.

Judge Ryland concurring, the judgment of the court below will be affirmed.

STATE OF MISSOURI, *sct.*

I, William E. Dunscomb, clerk of the supreme court of the State of Missouri, certify, that the foregoing thirty-eight pages contain a full, true, and complete transcript of the records and proceedings in the case of E. H. McCabe vs. L. D. Worthington, on a writ of error from the Audrain circuit court.

Given under my hand, with the seal of said court affixed, at the city of Jefferson, the 22d day of September, 1852.

[SEAL.]

WM. E. DUNSCOMB.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of the State of Missouri, before you, at the July term, 1852, between Edward H. McCabe, plaintiff, and Loyd D. Worthington, defendant, a manifest error hath happened, to the great damage of the said Edward H. McCabe, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court, this 10th day of September, in the year of our Lord one thousand eight hundred and fifty-two.

Issued at office in the city of St. Louis, under the seal of the circuit

court of the United States, for the Missouri district the date last above written.

BEN. F. HICKMAN,
C. C., U. S., Mo. dis.

Allowed by me.

H. R. GAMBLE,
P. judge, Supreme Court, Mo.

STATE OF MISSOURI, *sct.*

I, William E. Dunscomb, clerk of the supreme court of the United States of Missouri, certify, that in obedience to the command of the within writ, I herewith append a full, true, and complete transcript of the records and proceedings in the cause mentioned in the within writ, so far as the same remain on file and of record in my office.

Given under my hand, with the seal of said court affixed, at the city of Jefferson, the 22d day of September, 1852.

[SEAL.]

W. E. DUNSCOMB.

EDWARD H. McCABE
vs
LOYD D. WORTHINGTON. } In error.

Know all men by the presents, that we, Edward H. McCabe and Adam L. Mills, are held and firmly bound unto Loyd D. Worthington in the sum of four hundred dollars, to be paid to the said Loyd D. Worthington, his executors and administrators; to the payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 14th day of October, 1852.

Whereas the above named Edward H. McCabe hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the Supreme Court of the State of Missouri:

Now, therefore, the condition of this obligation is such, that if the above named Edward H. McCabe shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EDWARD H. McCABE, [SEAL.]
ADAM L. MILLS. [SEAL.]

Sealed and delivered in the presence of—
JOHN M. PEARSON.

I approve the foregoing bond.

H. R. GAMBLE,
P. judge, Supreme Court, Mo.